IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4645 OF 2004

ALONG WITH

CRIMINAL APPLICATION NO. 4484 OF 2004

ALONG WITH

CRIMINAL APPLICATION NO. 4486 OF 2004

ALONG WITH

CRIMINAL APPLICATION NO.4487 OF 2004

Kailash Jaylal Dadhia & Ors. ... Applicants

V/s

State of Maharashtra & Ors. ... Respondents

Mr. Ashish Bohra i/b A.S. Khan & Asso. for applicants

Mr. Amol V. Doijode for respondent No.2

Mr. A.M. Shingarpure, APP for the State.

Coram: V.M. Kanade, J.

Dated: 26/04/2005.

P.C. :-

1 I have heard the learned counsels for applicants and respondents.

2 The applicants are challenging the order of issuance of process by the Metropolitan Magistrate on the complaint filed by the respondent No.2 under section 138 of

Negotiable Instruments Act.

3 It is submitted by the learned counsel appearing for the applicants that there are no averments in the complaint that the applicants were in charge of and responsible for the affairs of the company as envisaged under section 141 (i) of the Negotiable Instruments Act. It is submitted that since there are no averments in the complaint so far as applicants are concerned, the process issued by the trial court is liable to be quashed and set aside. In support of said submission, the learned counsel has relied on list of 11 judgments of the Supreme Court and various High Courts. He has taken me to the complaint which is annexed at page-15 of the application. It is submitted that so far the applicants are concerned, in paragraph-2 the bald statement has been made that the accused Nos.2 to 7 were the Directors of the accused No.1.

4 The learned counsel appearing on behalf of the respondent No.2 has vehemently opposed the submission made by the learned counsel for the applicants. It is submitted that the accused No.1 is a private limited company and all the applicants are the brothers and were the Directors of the same company. It is further submitted that the complaint was filed on 29/4/2004. Initially, the accused No.6 had filed criminal application Nos.2262 to 2265 of 1998 challenging the issuance of process. In the said

applications, the stay was granted by this court. However, the said applications were heard and dismissed on 28/02/2003. It is submitted that thereafter in 2003 an application was filed by the present applicants for recalling the issuance of process and the present criminal applications were again filed in October 2004. It is submitted that in paragraph-2 there is specific averments that the applicants were the Director of the company. If the complaint is read as a whole, the requirement of section 141 has been made out in the complaint. It is further submitted that the criminal applications are liable to be dismissed on a sole ground of latches and delay of almost 10 years in filing the present applications after the process was issued.

5 In my view, the submission made by the learned counsel for the applicants cannot be accepted primarily on the ground of delay and latches. After the complaint was filed on 29/04/1998 one of the accused had filed the criminal application in this court in 1998 which was dismissed in 2003.During all this period, the present applicants did not take any steps for challenging the order of issuance of process. Thus, on this ground alone the criminal applications are liable to be dismissed. It is quite clear that the applicants are trying to protract the litigations and have filed these applications after 10 years.

6 Apart from that, from the perusal of complaint, it can be seen that the accused No.1 is a private limited company and all the applicants were the Directors of a said private limited company which is a family business of the applicants and other accused. The applicants,therefore, will have to lead evidence in the trial court or rebut presumption which is raised under section 139. In the result, criminal applications are dismissed. Interim order dated 24/10/2004 is vacated. The trial court is directed to expedite the hearing of the trial.

(V.M.Kanade,J.)